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The Honorable Christopher M. Alston
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In Re:

BRANDEE KRISTEN KRUMBAH

Debtor.

BRANDEE KRISTEN KRUMBAH

Plaintiff,

vs.

LITTON LOAN SERVICING LP

Defendant.

Case No. 16-15065

In Proceedings under Chapter 13

ADV. NO.

COMPLAINT TO VOID AND STRIP
LIEN FROM RECORD TITLE AND
FOR DETERMINATION OF LACK
OF SECURED STATUS

The Plaintiff, Brandee Kristen Krumbah, the debtor in the above-named Chapter 13
bankruptcy, through her attorney, Lawrence M. Blue, complains of the defendant and shows the
court as follows:

1 I. JURISDICTION, VENUE, CONSENT

2 1.1 This Court has jurisdiction of this adversary proceeding pursuant to the provisions
3 of 28 U.S.C § 157 and § 1334. This adversary proceeding is a core proceeding within the
4 meaning of 28 USC § 157(b) (2)(B), (C), (K) and (O).
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6 1.2 Venue is proper as this bankruptcy case was filed in the Western District of
7 Washington at Seattle, the debtor resides in King County, Washington, and the transaction in
8 question was entered in King County, Washington.
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10 1.3 The Plaintiff consents to the entry of final orders or judgments by the bankruptcy
11 judge pursuant to Fed. R. Bankr. P. 7008(a) and Local Rule 7012-1.
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13 II. PARTIES

14 2.1 PLAINTIFFS. Plaintiff, Brandee Kristen Krumbah (“Plaintiff”) resides in King
15 County, Washington. The Plaintiff is the debtor herein, and the debtor under a certain
16 Promissory Note, secured by a certain Deed of Trust, where Litton Loan Servicing LP is the
17 creditor (“Defendant” or “Litton”).
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19 2.2 DEFENDANT. Defendant Litton conducts business in King County, Washington.
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21 III. CLAIMS

22 3.1 NOTE AND DEED. On or about January 26th, 2006 the Plaintiff signed a
23 Promissory Note in the amount of \$90,000.00 with Litton. A Deed of Trust dated January 26th,
24 2006 purports to be the security instrument securing the Promissory Note dated on or about
25 January 26th, 2006. Said Deed of Trust was signed by Brandee Kristen Krumbah on or about
26 and January 26th, 2006. The Deed of Trust is a consensual lien in second position on the
27 debtor’s residence, legally described as:
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1 THE SOUTH 128 FEET OF THE WEST 150 FEET OF THE EAST 990 FEET OF THE SOUTH 1/2 OF THE
2 NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 26 NORTH, RANGE 5 EAST
3 W.M., IN KING COUNTY, WASHINGTON;

4 EXCEPT THAT PORTION LYING WITHIN NORTHEAST 112TH STREET;

5 SITUATE IN THE CITY OF KIRKLAND, COUNTY OF KING, STATE OF WASHINGTON.

6 The common address for the property is 11230 NE 112th, Kirkland WA 98033.

7 3.2 PROPERTY VALUE: The first deed of trust on the Debtor's principal
8 residence with Wells Fargo Home Mortgage is approximately \$453,224.19. In Schedule
9 A the debtor listed his principal residence with a value of \$447,000.00 based on a
10 November 7th, 2016 appraisal by Frontier Appraisal Services. Based on the Debtor's
11 valuation of the house the first deed of trust held by Wells Fargo Home Mortgage is
12 under-secured by \$6,224.19. The lien held by Litton is junior to that held by Wells Fargo
13 Home Mortgage and is wholly unsecured.
14

15 3.3 The value for the property at the time of filing is \$447,000.00. This value
16 was also used in the debtor's schedules. Litton has not filed a proof of claim in this case
17 and has not assigned a value to its lien.
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19 3.4 The first mortgage claim of Wells Fargo Home Mortgage is greater than the value
20 of the property. As a result the second mortgage claim of Litton is not secured. Pursuant to 11
21 U.S.C. § 506(a), Litton cannot have an allowed secured claim, as there is no equity to which a
22 lien could attach. Therefore, the Litton claim herein is unsecured, and it cannot have more than a
23 general allowed unsecured claim herein.
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26 3.5 Because Litton's claim is unsecured, its rights may be modified under 11 U.S.C. §
27 1322(b)(2). The Bankruptcy Code protects claims "secured only by a security interest in real
28 property that is the debtor's principle residence" from modification under a Chapter 13 plan, 11
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1 U.S.C. §1322(b)(2), but the Ninth Circuit Court has held “a wholly unsecured lien holder is not
2 entitled to the protections of 11 U.S.C. § 1322(b)(2).” Zimmer v. PSB Lending Corporation, 313
3 F.3d 1220, 1221. Under 11 U.S.C. §506(a)(1) an allowed claim of a creditor secured by a lien on
4 property is a secured claim only “to the extent of such creditor’s interest in the estate’s interest in
5 such property.” It is an unsecured claim “to the extent that the value of such creditor’s interest...
6 is less than the amount of such allowed claim.” The claim of Litton is a wholly unsecured claim.
7 Under 11 U.S.C. §506(d) to the extent a lien secures a claim against the debtor that is not a
8 secured claim such lien is void.
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11 Therefore, Litton’s lien may be stripped from record title. To prevent modification,
12 Litton as a lien holder, must be a holder of a secured claim rather than merely a holder of a
13 security interest to be protected from modification under 11 U.S.C. § 1322(b)(2). In this case, it
14 is merely a holder of a security interest and the holder of a claim that is not supported by estate
15 property. This lien may be treated as unsecured and may be stripped from record title under In re
16 Lam v. Investors Thrift, 211 B.R. 36 (Bank.r 9th Cir. 1997).
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19 IV. PRAYER FOR RELIEF

20 WHEREFORE, the Plaintiff prays for judgment as follows:

21 4.1 For entry of a judgment that strips the lien of Litton from record title and permits the
22 Plaintiff to record said Order.
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24 4.2 For disallowance of any secured claim to filed by Litton for its second deed of trust,
25 but allowance for a general unsecured claim.
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27 4.3 For such other and further relief as may be just and equitable under the
28 circumstances.
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1 DATED: January 25th, 2017 /s/ Lawrence M. Blue
2 Lawrence M. Blue, WSBA #29483
3 Attorney for Plaintiff
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